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Attorney for Chapter Seven Trustee  
Allen Dutra

Eq 9/23/13

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

oOo

BK-N- 11-51998-btb  
CHAPTER 7

IN RE

RICK J. ARNAUD,

Debtor(s).

ALLEN M. DUTRA, Chapter Seven  
Trustee,

Plaintiff

vs.

RICK J. ARNAUD, MAIN STREET  
PAWN, INC., DAN S. MCCASSIE and  
RONALD ARNAUD,

Defendants

Adv. No. 13-5027  
Hearing Date: \_\_\_\_\_  
and Time: \_\_\_\_\_  
Mtn No. \_\_\_\_\_  
Est Time: 5 Minutes

PLAINTIFF'S MOTION TO DISMISS  
ADVERSARY COMPLAINT

COMES NOW Plaintiff, Allen M. Dutra, Trustee of the estate of the Debtor above-named, by and through undersigned counsel, and files the following Motion to Dismiss his Adversary Complaint against Ronald Arnaud, Main Street Pawn, Inc. and Dan S. McCassie. This motion is made and based upon the pleadings on file herein and the Memorandum of Points and Authorities attached hereto.

MEMORANDUM OF POINTS AND AUTHORITIES

1 The Debtor filed the instant bankruptcy on June 17, 2011. At that time, the  
2 Debtor owned the real property located at Hart Lane in Churchill County, Nevada  
3 and a 2004 Correct Craft boat.

4 On June 13, 2013 the Plaintiff filed the instant adversary. This complaint  
5 sought to avoid the deed of trust in favor of Ronald Arnaud, who is the Debtor's  
6 father. This deed of trust secured an antecedent debt, and it was recorded within the  
7 one year period prior to the filing of the bankruptcy.

8 The complaint also sought to avoid the transfer of the 2004 Correct Craft to  
9 Main Street Pawn, Inc. and Dan S. McCassie. While it is not certain exactly when the  
10 boat was transferred, the Plaintiff alleged it was either an unperfected pre-petition  
11 lien which could be avoided under 11 U.S.C. §544(a) or an unauthorized post  
12 petition transfer which could be avoided under 11 U.S.C. §549.

13 Both Ronald Arnaud and Dan McCassie have been very cooperative with  
14 respect to the Trustee's efforts to avoid these transfers. On July 15, 2013 Ronald  
15 Arnaud executed a reconveyance of his deed of trust. This was recorded in the  
16 Churchill County Recorder's office on August 26, 2013. Please see Exhibit "1".

17 Mr. McCassie and the Debtor turned over the boat to the Trustee, who has  
18 since given it to Samantha Brockeslby to auction.

19 The Trustee has a sale pending for the Hart Lane property. Escrow is set to  
20 close on September 24, 2013. One of the conditions of escrow is the avoidance of  
21 Ronald Arnaud's deed of trust. Counsel has been in communication with Dana von  
22 Stetina at Northern Nevada Title Company. She believes the recorded deed of  
23 reconveyance will be sufficient to clear title. However, if it is not, then the Plaintiff  
24 will seek entry of a formal declaratory judgment to title can issue. On September  
25 12, 2013 this Court entered an Order granting the Plaintiff's motion to enter  
26 judgment. However, assuming escrow can close with the recorded deed, then there  
27  
28


1 is no need for a judgment. By the time of the hearing on this motion, counsel will  
2 know whether a judgment is needed or if the matter may be dismissed.

3 **Argument**

4 Fed. R. Bank. Pro. 7041 incorporates Fed. R. Civ. Pro. 41. Subsection (a)(2)  
5 allows the Court to dismiss a complaint upon the Plaintiff's motion only when it is  
6 pursuant to terms the Court deems proper. Since no party has filed an answer or a  
7 motion for summary judgment, the Plaintiff could have dismissed his adversary by  
8 notice. However, the Plaintiff wanted the Court and interested parties to know the  
9 reasons for the dismissal, which is why this Motion is being made pursuant to Fed.  
10 R. Civ. Pro. 41(a)(2).

11 In light of the foregoing, the Plaintiff respectfully requests that this Court  
12 enter a dismissal of this adversary against all parties. In the event that the Title  
13 Company notifies counsel escrow cannot close without a declaratory judgment,  
14 then the Plaintiff shall file an amendment to this motion to advise the Court and  
15 other parties.

16  
17 Dated: This 19 day of September, 2013

18  
19 By:   
20 Michael Lehnert, Esq.  
21 429 Marsh Ave.  
22 Reno, Nevada 89509  
23 Nevada Bar Number 003331  
24  
25  
26  
27  
28

# Exhibit 1

# Exhibit 1

APN: C09-271-54

RECORDING REQUESTED BY:  
Northern Nevada Title Company

When Recorded Mail Document To:  
Michael Lehmars, Esq.  
428 Marsh Ave.  
Reno, NV 89509

Escrow No.: 1100215-DV  
Title No.:

APN: C09-271-54

DOC # 436638  
08/26/2013 03:07 PM  
**Official Record**  
Recording requested By  
NORTHERN NEVADA TITLE CC

Churchill County - NV  
Joan Sims - Recorder  
Page 1 of 2 Fee: \$43.00  
Recorded By: TH RPTT: \$0.00



SPACE ABOVE THIS LINE FOR RECORDER'S USE

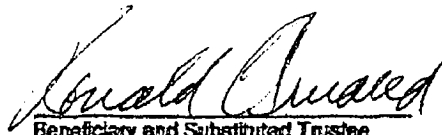
### SUBSTITUTION OF TRUSTEE AND FULL RECONVEYANCE

WHEREAS, Rick J. Arnaud was the original Trustor, Title Service and Escrow Company the original Trustee, and Ronald Arnaud the Beneficiary,

under that certain Deed of Trust dated February 4, 2010 and recorded March 14, 2011 as Document No. 419380 on March 14, 2011 in Official Records of the Churchill County, State of Nevada, and

WHEREAS, the undersigned Beneficiary desires to substitute a new Trustee under said Deed of Trust in place and instead of Title Service and Escrow Company now therefore, the undersigned hereby substitutes Ronald Arnaud as Trustee under said Deed of Trust and as the substituted Trustee does hereby reconvey, without warranty, to the person or persons legally entitled thereto, the Estate now held thereunder.

DATED: July 15, 2013

  
Beneficiary and Substituted Trustee  
Ronald Arnaud

STATE OF NEVADA)

COUNTY OF \_\_\_\_\_)

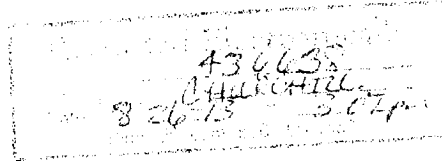
On \_\_\_\_\_, 2013 personally appeared before me, a  
Notary Public, Ronald Arnaud who acknowledged that he  
executed the above instrument.

Signature \_\_\_\_\_  
(Notary Public)

See Attached

APN: 009-271-54

RECORDING REQUESTED BY:  
Northern Nevada Title Company



When Recorded Mail Document To:  
Michael Lenners, Esq.  
429 Marsh Ave.  
Reno NV 89509

Escrow No.: 1100215-DV  
Title No.:

APN: 009-271-54

SPACE ABOVE THIS LINE FOR RECORDER'S USE


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under that certain Deed of Trust dated February 4, 2010 and recorded March 14, 2011 as Document No. 419380 on March 14, 2011 in Official Records of the **Churchill County**, State of **Nevada**, and

WHEREAS the undersigned Beneficiary desires to substitute a new Trustee under said Deed of Trust in place and instead of Title Service and Escrow Company now therefore, the undersigned hereby substitutes **Ronald Arnaud** as Trustee under said Deed of Trust and as the substituted Trustee does hereby reconvey, without warranty, to the person or persons legally entitled thereto, the Estate now held thereunder.

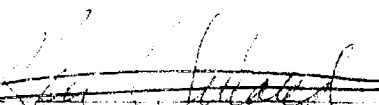
DATED: July 15, 2013

  
Beneficiary and Substituted Trustee  
Ronald Arnaud

STATE OF NEVADA)

COUNTY OF \_\_\_\_\_)

On \_\_\_\_\_, 2013, personally appeared before me, a Notary Public, Ronald Arnaud who acknowledged that he executed the above instrument.

Signature:   
Notary Public

See Attached

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

CIVIL CODE § 1189

State of California

County of Santa CruzOn July 31, 2013 before me, Kathryn Allison Baumert, Notary Public  
Date Here Insert Name and Title of the Officer  
personally appeared Ronald L. Arnaud  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person~~s~~ whose name~~s~~ is~~are~~ subscribed to the within instrument and acknowledged to me that ~~he~~~~she~~~~they~~ executed the same in ~~this~~~~her~~~~their~~ authorized capacity~~(ies)~~, and that by ~~his~~~~her~~~~their~~ signature~~s~~ on the instrument the person~~s~~, or the entity upon behalf of which the person~~s~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature

Signature of Notary Public

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_ Signer's Name: \_\_\_\_\_

☐ Corporate Officer — Title(s): \_\_\_\_\_ ☐ Corporate Officer — Title(s): \_\_\_\_\_☐ Individual ☐ Individual☐ Partner — ☐ Limited ☐ General ☐ Partner — ☐ Limited ☐ General☐ Attorney in Fact ☐ Attorney in Fact☐ Trustee ☐ Trustee☐ Guardian or Conservator ☐ Guardian or Conservator☐ Other: \_\_\_\_\_ ☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_ Signer Is Representing: \_\_\_\_\_